

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**KOCH PIPELINE COMPANY, L.P.
ST. JAMES PARISH
ALT ID NO. 2560-00013**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

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* **ENFORCEMENT TRACKING NO.**
* **AE-CN-03-0325**
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* **AGENCY INTEREST NO. 36538**
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SETTLEMENT

The following Settlement is hereby agreed to between Koch Pipeline Company, L.P. ("KPL") ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I.

Respondent is a Limited Partnership. KPL operates the St. James Crude Oil Terminal (the "facility") located at 7167 Koch Road in St. James, St. James Parish, Louisiana. Koch Supply & Trading, L.P. is the owner of the facility. The facility operated under Part 70 Air Permit No. 2560-00013-VO, issued on July 31, 1998, from the date of issuance through February 19, 2003. The facility currently operates under Part 70 Air Permit No. 2560-00013-V1, issued on February 20, 2003, and Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0325 ("CONOPP"), issued December 5, 2003 and which contains interim emissions limits. The facility submitted a timely permit renewal application on or about January 29, 2003 and is required under the CONOPP to submit a supplement to the renewal application by no later than March 30, 2004. Under the permit and the CONOPP, the facility operates

sixteen (16) above ground storage tanks, with fourteen (14) devoted to storage of petroleum products, a Marine Loading Terminal, and other small miscellaneous emissions points. Twelve (12) of the fourteen (14) petroleum tanks contains either an external or internal floating roof. The facility is a major source of volatile organic compounds (VOCs) and a minor source of toxic air pollutants.

II.

On December 5, 2003, a Consolidated Compliance Order and Notice of Potential Penalty (“CONOPP”), including interim emissions limits, was issued to Respondent, which was based on the following findings of fact:

On or about September 24, 2003, a file review of the Respondent’s facility was performed to determine the degree of compliance with the Act and Air Quality Regulations.

While the Department’s investigation is not yet complete, the following violations were noted during the course of the file review:

The Respondent exceeded the permitted annual VOC emission limits for the facility during the years 1998 through 2003 as a result of the omission of the historical operational tank roof landing emissions in the Part 70 permit application. As a consequence of the omission of the historical operational tank roof landing emissions, the Respondent exceeded permitted annual VOC emissions limits for certain Emissions Points as set forth below:

Emission Point No.	Permitted VOC Limit (tons/year)	2003 Emissions¹ (tons/year)	2002 Emissions² (tons/year)
Tk1	6.91	19.17	4.83 ⁴
Tk2	6.91	74.45	142.49
Tk3	2.12	1.92 ⁴	18.30
Tk4	2.22	5.06	7.54
Tk5	7.02	0.16 ⁴	42.29
Tk6	7.02	20.59	66.52
Tk7	3.23	15.42	13.22

Emission Point No.	Permitted VOC Limit (tons/year)	2003 Emissions¹ (tons/year)	2002 Emissions² (tons/year)
Tk8	3.23	NA ³	0.02 ⁴
Tk13	3.44	28.04	31.97
Tk26	0.15	NA ³	NA ³
Tk27	3.67	6.02	NA ³
Tk413	2.80	1.80 ⁴	9.43
Tk430	2.34	8.67	10.02
Tk463	1.55	1.67	3.31

¹ Evaporative Emissions from operational tank roof landing losses. Tank roof landings were temporarily suspended by May 28, 2003.

² Evaporative Emissions from operational tank roof landing losses and other operating emissions.

³ NA reflects zero operational tank landings during the indicated year.

⁴ Did not exceed the permitted VOC emission limit for operating emissions.

Each exceedance is a violation of Part 70 Air Permit Nos. 2560-00013-V0 and/or 2560-00013-V1, LAC 33:III.501.C.4 and Sections 2057(A)(1) and (A)(2) of the Act.

III.

In response to the CONOPP the Respondent did not request a hearing, but elected to enter into immediate settlement negotiations with the Department and participated in several meetings with the Department to provide information that was requested by the Department in the Compliance Order.

IV.

Respondent met with the Department on January 21, 2004, to discuss the violations, mitigating circumstances and the penalty factors. At that meeting, Respondent also disclosed that it had not, at all times, complied with the submerged fill pipe requirements of LAC 33:III.2103.B and conferred with the Department on operational plans that ensure compliance with this requirement in the future. Respondent also noted that records are not kept allowing it to specifically identify the dates of any noncompliance with the submerged fill pipe requirements.

Any such failure to comply with LAC 33:III.2103.B is a violation of Part 70 Air Permit No. 2560-00013-V1, LAC 33:III.501.C.4 and Sections 2057(A)(1) and 2057(A)(2) of the Act.

V.

During the meeting between Respondent, and the Department on January 21, 2004, the Department advised Respondent of the conclusions of its review of the information submitted in response to Paragraph IV of the Compliance Order. The Department concluded that approximately nine tank roof landings at Emission Point No. Tk27, conducted on or about March 11-14, 2003, March 20-21, 2003, March 26-27, 2003, March 28-29, 2003, March 31-April 1, 2003, April 10-11, 2003, April 15, 2003, April 19-20, 2003 and April 22-23, 2003 violated New Source Performance Standard (“NSPS”) Subpart Ka because the tank was not emptied to the maximum extent possible by the terminal pumping equipment. This is a violation of NSPS Subpart Ka, 40 CFR §60.112a(a)(1) which language has been adopted in LAC 33:III.3003, Part 70 Air Permit No. 2560-00013-V1, LAC 33:III.501.C.4 and Sections 2057(A)(1) and 2057(A)(2) of the Act.

VI.

During the meeting between Respondent, and the Department on January 21, 2004, the Department further advised Respondent of the conclusions of its review regarding reporting and/or recordkeeping required by permit and regulations. The Department concluded that reporting in the form of potentially incomplete Emissions Inventory Statements (“EISs”), quarterly excess emissions reports, semi-annual reports, annual compliance certifications and required notifications may have occurred in the absence of a full understanding of tank roof landing emissions. Incomplete or incorrect reporting or failure to report violated Part 70 General Conditions K, L, M and R of Part 70 Air Permit No. 2560-00013-V1, LAC 33:III.501.C.4,

507(H)(1), 507(H)(5), 919, 927, LAC 33:I Chapter 39 and Section 2057(A)(2) of the Act.

VII.

During the meeting between Respondent, and the Department on January 21, 2004, the Department further advised Respondent that it had not paid the full amount of emissions fees for the years 1998 through 2002, due to the failure to accurately report emissions in EISs. Failure to pay all emissions fees is a violation of Part 70 General Condition G of Part 70 Air Permit No. 2560-00013-V1, LAC 33:III.Chapter 2, LAC 33:III.501.C.2 and C.4 and Section 2057(A)(2) of the Act.

VIII.

On April 2, 2004, Respondent provided notice to the Department of an air permit deviation occurring during year 2003. Emissions estimates using new AP-42 emissions factors (Tanks 4.09b program) and updated tank attributes (collectively, emissions factors) indicate that annual operating emissions estimates from Emissions Points Nos. Tk3 and Tk13 were 2.24 and 3.79 TPY, respectively, for VOCs, while annual emissions limits in the Permit were 2.12 and 3.45 TPY, respectively. However, actual throughputs for Emissions Points Nos. Tk3 and Tk13 were below permitted levels during 2003. Prior to the time of issuance of the CONOPP, Respondent advised the Department of the results of a new tank attribute study that demonstrated the need for slight changes to annual emissions limits for Emissions Points Nos. Tk3 and Tk13. The Department took this into consideration when it issued the CONOPP on December 5, 2003 by establishing interim emissions limits to be effective until issuance of a renewal permit. Annual operating emissions for Emissions Points Nos. Tk3 and Tk13 were below interim emissions limits for 2003 as set forth in the CONOPP.

IX.

The matters addressed in this Settlement Agreement represent contested allegations, and neither Respondent nor the Department intends for the execution of this Agreement to be construed as an admission of liability for any violations, fines, forfeitures and/or penalties under the Federal Clean Air Act and/or the Louisiana Environmental Quality Act, and/or under regulations promulgated under each and/or under any other relevant statutes or regulations.

X.

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of: (1) SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00), of which Seven Hundred Seventy-One and 83/100 dollars (\$771.83) represents DEQ's enforcement costs; plus (2) TEN THOUSAND FORTY-THREE AND NO/100 DOLLARS (\$10,043.00), representing the monetary benefit of Respondent relative to the matters addressed herein; plus (3) SEVENTEEN THOUSAND THREE HUNDRED TWENTY-NINE AND 29/100 DOLLARS (\$17,329.29), representing the payment of past due and owing emissions fees. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XI.

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action

by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the alleged violations alleged herein for the sole purpose of determining Respondent's compliance history.

XII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

XIII.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

XIV.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. James Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XV.

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XVI.

In consideration of the above, any claims for penalties for any matter included herein or addressed by this Settlement Agreement are hereby compromised and settled in accordance with the terms of this Settlement.

XVII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

KOCH PIPELINE COMPANY, L.P.

BY: Patrick M. McCann RJK
(Signature)

Patrick M. McCann
(Printed or typed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 23 day of
August, 2004, at 4111 East 37th N.
Wichita, Ks.



Dana Glasse
NOTARY PUBLIC (ID# _____)

Dana Glasse
(Printed or Typed)

STATE OF LOUISIANA
Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 17th day of
December, 2004, at Baton Rouge, Louisiana.

Christopher A. Ratcliff
NOTARY PUBLIC (ID # 186754)

Christopher A. Ratcliff
(Printed or Typed)

Approved: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary

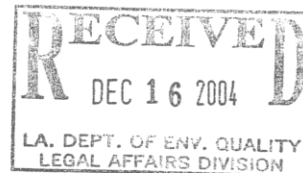


CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

December 13, 2004

Mr. Louis E. Buatt, General Counsel
La. Department of Environmental Quality
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821-4302




Re: AG Review of DEQ Settlement;
Koch Pipeline Company, L.P.
AE-CN-03-0325

Dear Mr. Buatt:

Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,

By:


CHARLES C. FOTI, JR.
Attorney General

CCF/mlc